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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TYRONE HAZEL, ROXANE EVANS, VALERIE TORRES, and RHONDA HYMAN, individually and on behalf of all others similarly situated,

Case No. 3:22-cv-07465-CRB

Plaintiffs,

VS.

PRUDENTIAL FINANCIAL, INC.,
ACTIVEPROSPECT, INC., and ASSURANCE
IQ, LLC

SECOND AMENDED CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Defendants.

NATURE OF THE ACTION

1. Prudential Financial Inc., acting on its own behalf and through its wholly owned
 2 subsidiary, Assurance IQ, LLC (collectively, “Prudential”), offers consumers a quote for life insurance
 3 in minutes if they fill out a form online at Prudential.com. To obtain the quote, consumers must enter
 4 private information about themselves and their health history.

2. ActiveProspect Inc. (“ActiveProspect”) sells software that records consumer interactions
 3 with a website in real time. Website owners can use this software by adding ActiveProspect’s javascript¹
 4 into the source code of their webpage. Doing so permits both ActiveProspect and the website owner to
 5 record a visitor’s keystrokes and other actions on the website.

3. Prudential embedded ActiveProspect’s software in the computer code on its website to
 4 optimize its lead generation efforts. Prudential benefits financially from collecting information provided
 5 by potential customers, or “leads,” who indicate an interest in purchasing life insurance or other
 6 financial products. Adding ActiveProspect’s software allowed both companies to surreptitiously observe
 7 and record visitors’ keystrokes, mouse clicks, and other electronic communications, including their entry
 8 of Personally Identifiable Information (“PII”) and Protected Health Information (“PHI”).

4. When users seeking a life insurance quote enter private information on Prudential.com,
 5 Prudential shares those communications with ActiveProspect in real time, without notifying users and
 6 without first obtaining their consent. The communications Prudential shares with ActiveProspect include
 7 users’ geolocation and answers regarding their private, personal and medical information, such as age,
 8 height, weight, information regarding medical conditions, prescribed medications, and hospitalization
 9 history. ActiveProspect’s software purports to increase the value of Prudential’s leads by harvesting
 10 extra information about each person and independently documenting the information the person
 11 provided.

5. By intercepting website users’ communications, Prudential and ActiveProspect violate
 6 the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code § 631, and invade Plaintiffs’ and class
 7 members’ privacy rights in violation of the California Constitution.

28¹ JavaScript is a programming language commonly used in website development to add features and
 29 functions to a website.

6. Plaintiffs Valerie Torres and Rhonda Hyman each used the Prudential website to search for an insurance quote, entering private information into the online form at Prudential.com. During each visit, Defendants Prudential and ActiveProspect recorded Plaintiffs' electronic communications in real time, and used the intercepted data to learn their identity, zip code, date of birth, height, weight, medical and psychiatric conditions and treatment history, use of prescription medications and tobacco products, or other PII and PHI without their consent.

7. Plaintiffs bring this action on behalf of themselves and a class of all other Californians whose electronic communications were intercepted through Prudential's use of ActiveProspect software on its website.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and at least one member of the proposed class is citizen of state different from at least one Defendant.

9. This Court has personal jurisdiction over Defendants because each of the Defendants purposefully availed itself of the laws and benefits of doing business in California, and Plaintiffs' claims arise out of each of the Defendants' forum-related activities. A substantial portion of the events giving rise to Plaintiffs' claims occurred in this District.

10. Pursuant to 28 U.S.C. § 1391, this Court is a proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District.

DIVISIONAL ASSIGNMENT

11. Assignment to the San Francisco or Oakland Division is appropriate under Local Rule 3-2(c) and (d) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Alameda County.

PARTIES

12. Plaintiff Valerie Torres is a citizen of the State of California and resides in Los Angeles, California.

1 13. Plaintiff Rhonda Hyman is a citizen of the State of California and resides in Los Angeles,
 2 California.

3 14. Defendant Prudential Financial Inc. is a New Jersey company with its principal place of
 4 business at 751 Broad Street, Newark, NJ 07102.

5 15. Prudential Financial, Inc. is a global financial services provider and active global
 6 investment manager. Among other services, Prudential Financial, Inc. “matches buyers with products
 7 such as life and health insurance and auto insurance, enabling them to make purchases online or through
 8 an agent.”²

9 16. Prudential Financial, Inc. does business throughout California and the entire United
 10 States.

11 17. Prudential Financial, Inc. owns and operates Prudential.com.

12 18. Defendant Assurance IQ, LLC is a Washington limited liability company with its
 13 principal place of business at 920 5TH AVE., SUITE 3600 SEATTLE, WA 98104. Assurance IQ, LLC
 14 is a wholly-owned subsidiary of Prudential Financial, Inc.

15 19. Assurance IQ, LLC does business throughout California and the entire United States.

16 20. Prudential Financial, Inc. collaborated with Assurance IQ, LLC on the creation of
 17 term.prudential.com, the webform on Prudential.com that uses ActiveProspect’s TrustedForm
 18 technology. Assurance IQ, LLC, on behalf of Prudential Financial, Inc., handles the day-to-day
 19 operation and maintenance of that webform.

20 21. Allegations in this complaint regarding “Prudential” mean both Prudential Financial Inc.
 21 and Assurance IQ, LLC. At all relevant times, Prudential Financial, Inc. and Assurance IQ, LLC were
 22 each a principal, agent, alter ego, joint venturer, partner, or affiliate of one another, and in doing the acts
 23 alleged herein, were acting within the course and scope of that principal, agent, alter ego, joint venture,
 24 partnership, or affiliate relationship. Prudential Financial, Inc. and Assurance IQ, LLC had actual
 25 knowledge of the wrongful acts of the other Defendants; ratified, approved, joined in, acquiesced, or
 26 authorized the wrongful acts of the other Defendants.

28 2 <https://www.prudential.com/about>.

22. Defendant ActiveProspect Inc. is a Nevada corporation with its principal place of business at 4009 Marathon Boulevard, Austin, TX 78756.

23. ActiveProspect is a software-as-a-service (“SaaS”) company. In connection with its services to website operators, ActiveProspect provides a software product called “TrustedForm,” which monitors and records a website user’s activity on a webpage. TrustedForm purports to increase the value of leads generated on third party websites by capturing the information each lead provides and recording other information about them such as their IP address and geolocation.

FACTUAL ALLEGATIONS

I. ActiveProspect Offers “TrustedForm” Lead Generation Software

24. Defendant ActiveProspect provides a variety of “real time” products for companies that generate online leads for products or services or that engage in telemarketing.

25. As a patent obtained by ActiveProspect explains, “‘Lead generation’ generally refers to the creation or generation of prospective consumer interest or inquiry into products or services of a business. . . . In a typical lead generation scenario, a consumer completes an online request form on a website.”³ In such a scenario, the owner of the website with the form is the lead seller, and a separate party who purchases the consumer’s data is the lead buyer.

26. One of ActiveProspect's products is called "TrustedForm," which it touts as a "lead certification product" that purports to help businesses authenticate user interactions with a website, including, for example, by recording a user's responses to questions. TrustedForm provides a "means for a lead buyer to verify when and where an Internet lead was collected by a lead seller."⁴

27. On its website, ActiveProspect states that one of the “key features and benefits” of TrustedForm is the “VideoReplay” feature, which records, in real time, a website visitor’s keystrokes, mouse clicks and other interactions with a website. The video provides a “moment-by-moment replay of

³ System and Method for Electronic Lead Verification, U.S. Patent No. 20120290491 A1 (“ActiveProspect Patent”).

⁴ *Supra* n.3, ActiveProspect Patent.

1 exactly what happened on the page in the order it happened. . . . **Whatever the user does on the page is**
 2 **captured, including changes and corrections to the information entered in the form.”⁵**

3 28. ActiveProspect also advertises other data that TrustedForm can acquire, including the
 4 “time on page,” “lead age,” and geographic location of user⁶:

5 Benefits of TrustedForm Insights

6 Savvy marketers then use that data to make purchase decisions, determine pricing strategies, and set routing rules.

7 **TrustedForm Insights data includes:**



8 **Originating Domain** Identify the best lead sources for your business
 9 by tracking leads back to the site that generated them, regardless of
 where you bought them.



10 **Time on Page** Understand intent – a longer time on page can indicate
 11 higher intent to purchase and a higher-value lead.



12 **Geolocation & IP Address** Only purchase the leads that are
 13 generated in your geographic footprint (and are most likely to
 become customers).



14 **Lead Age** Timing is critical for all real-time leads. Lead Age
 15 ensures the leads you’re purchasing are actively shopping for your
 product or service so you can determine purchasing and pricing
 strategies.



16 **Browser, Device and Operating System** Hone in on the
 17 characteristics of your target prospect using attributes to help
 ensure you pay the right price for the right leads.

18 Hi_Need

19 **Fig. 1**

20 29. ActiveProspect instructs prospective partners to add the “javascript to their form and start
 21 capturing lead certificates.”⁷ As soon as the TrustedForm Script is added to a webpage, ActiveProspect
 22 will automatically start to capture the data submitted in the form.⁸

23 30. The code allows ActiveProspect to record the keystrokes, mouse clicks, data entry, and
 24 other electronic communications of visitors to websites where the code is installed. It also allows
 25 ActiveProspect to track the “website of origin” (the website from which a user navigated to the website
 26 using TrustedForm, i.e., part of the visitor’s internet browsing history), amount of time spent on the
 27 website, geographic location of the visitor, and other information. ActiveProspect, in turn, provides this
 28 data to its clients.

25 ⁵ <https://community.activeprospect.com/questions/4180654> (emphasis added).

26 ⁶ <https://activeprospect.com/trustedform/insights/>.

27 ⁷ <https://activeprospect.com/blog/video-ease-of-implementing-trustedform/>;
 28 <https://www.youtube.com/watch?v=Y5F4EjmG4CM>.

29 ⁸ <https://developers.activeprospect.com/docs/trustedform/implementing-trustedform-s-script/>.

1 31. The recording of keystrokes, mouse clicks, data entry, and other electronic
 2 communications begins the moment a user accesses or interacts with a webpage using TrustedForm.⁹

3 32. According to ActiveProspect's patent, this user data collection occurs in real time: "[T]he
 4 verification server collects information about the visitor and the lead generator during the
 5 communication session during which the lead generator receives contact information and other relevant
 6 information (i.e. lead data) submitted by the visitor."¹⁰

7 33. The patent further states that ActiveProspect's software transmits the information
 8 captured to ActiveProspect's server: "At this point, [ActiveProspect's] server is 'aware' of the URL of
 9 the form and begins to monitor the web page for any changes . . . From there on, the verification server
 10 monitors the web page . . . [F]or each change detected, snapshots of the web page are captured including
 11 at least one of the HTML, image files, and a high-resolution, full-length image of the web page."

12 34. In a 2017 study by Princeton University researchers concerning similar technology, the
 13 researchers noted that "the extent of data collected by these services far exceeds user expectations; text
 14 typed into forms is collected before the user submits the form, and precise mouse movements are saved,
 15 all without any visual indication to the user."¹¹

16 35. All videos of customer data are hosted on Active Prospect's servers, as opposed to the
 17 servers or computers of ActiveProspect's clients. Accessing the video of a website visitor's interactions
 18 requires a unique URL link provided by ActiveProspect, which directs visitors to a web server on
 19 trustedform.com, where the video can be viewed. The link corresponds to a unique ID and a "certificate"
 20 that ActiveProspect generates and issues.

21 36. ActiveProspect also acknowledges on its website that "TrustedForm independently
 22 collects and stores information about who filled out a form, when, and where."

23
 24
 25
 26 ⁹ <https://community.activeprospect.com/posts/4078773-trustedform-s-session-replay>.

27 ¹⁰ System and Method for Electronic Lead Verification, U.S. Patent No. 20120290491 A1.

28 ¹¹ <https://freedom-to-tinker.com/2017/11/15/no-boundaries-exfiltration-of-personal-data-by-session-replay-scripts/>.

1 37. Several provisions in ActiveProspect's standard form End User License Agreement
 2 ("EULA") with its website-operator clients confirm that ActiveProspect records and receives data from
 3 website visitors:

- 4 • The EULA provides that "when a site visitor visits the [client's website], the
 5 TrustedForm Script contacts the Trusted Form Server, which then collects
 6 information about that site visit."
- 7 • The EULA requires website owners to agree that ActiveProspect "cannot and
 8 does not guarantee that Your Content and Data will not be accessed by
 9 unauthorized persons." The term "Content and Data" is defined to include
 10 "information pertaining to Leads [i.e., website visitors] that may contain
 11 individual, personally identifiable information."
- 12 • The EULA expressly gives ActiveProspect the right to use aggregate data
 13 collected from website visitors for any activity it deems to have a legitimate
 14 business purpose, including tracking and reporting on industry trends.
- 15 • The model language for privacy policies contained in the EULA states that
 16 TrustedForm "collects" information and "independently document[s] users'
 17 consent to be contacted."

18 38. ActiveProspect's business model involves entering into partnerships with various
 19 companies, to which it furnishes its software. One of ActiveProspect's partners is Prudential.

20 39. ActiveProspect benefits financially when lead generators like Prudential purchase its
 21 services associated with TrustedForm. And lead generators like Prudential who use TrustedForm benefit
 22 financially from sharing users' data with ActiveProspect, including because "certifying" leads and
 23 harvesting extra data about the users increases the value of the leads, which lead generators sell to lead
 24 buyers. Thus, both ActiveProspect and Prudential benefit from Prudential's use of TrustedForm.

25 **II. Prudential Uses ActiveProspect's TrustedForm Software**

26 40. Prudential provides life insurance, retirement, mutual fund, annuities, and investment
 27 management services.

41. On February 23, 2021, Prudential launched a page on Prudential.com where, to obtain a quote on a Prudential life insurance plan, consumers fill out a form online at term.prudential.com.

42. Prudential Financial leveraged the technology of its wholly-owned subsidiary Assurance IQ to expand its direct-to-consumer distribution channels through the life insurance webform. Prudential Financial collaborated with Assurance IQ on the creation and operation of the webform, with Assurance IQ building the webform and performing day-to-day operation and maintenance on behalf of Prudential Financial.

43. The webform to obtain a life insurance quote was designed including ActiveProspect's TrustedForm technology, and TrustedForm has operated on the webform since its launch.

44. On the homepage of Prudential.com, users are prompted to select the “get an instant quote” button, shown below, to “get a quote in minutes.”

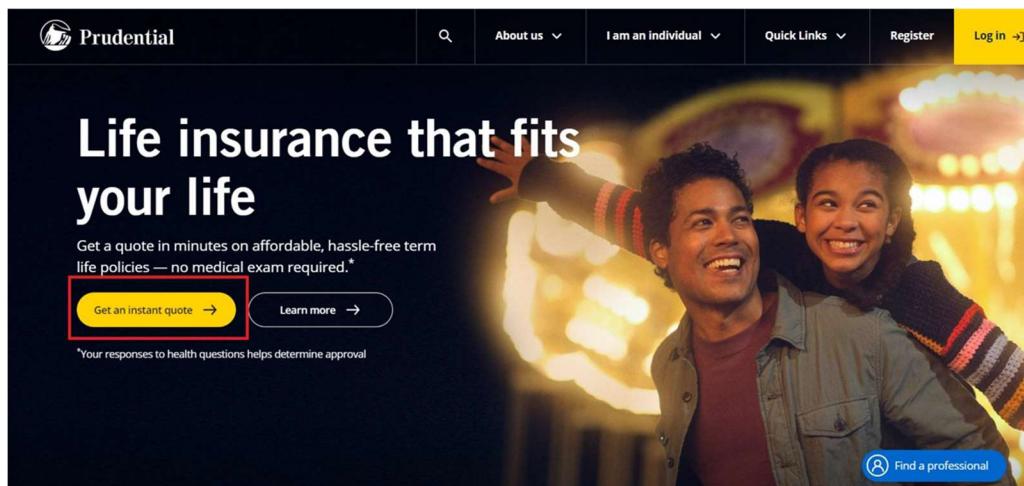


Fig. 2

45. After selecting the “get an instant quote” button, users are required to answer multiple questions, including questions about their medical health. Users must communicate to Prudential the following facts, among others:

- a. Name, zip code, and date of birth;
- b. Height and weight;
- c. The use of prescription medications and tobacco products;

1 d. Whether they have medical conditions, such as cancer, chronic pain, diabetes,
 2 heart or circulatory disorders, or respiratory disorders;
 3 e. Whether they have mental or psychological conditions, such as anxiety,
 4 depression, or bipolar syndrome;
 5 f. Treatment history for identified medical and psychological conditions and other
 6 PHI.

7 46. Prudential uses TrustedForm on Prudential.com and has done so since approximately
 8 February 23, 2021.

9 47. TrustedForm's code is embedded into the source code of Prudential's website, as shown
 10 in the red box below:

```

11 <html lang="en">
12   ><head>...</head>
13   ><body class="prudential" id="customer-body-id-for-css" onload>
14     ><noscript>...</noscript>
15     ><div id="header-of-plate" role="banner">...</div>
16     ><div class="content-wrapper">...</div>
17     ><div class="content-wrapper">...</div>
18     ><div class="content-wrapper">...</div>
19     ><div class="content-wrapper" id="content-wrapper" role="main">...</main>
20     ><div id="footer-of-plate">...</div>
21     ><div id="modal-wrapper"></div>
22     ><script src="https://cdnjs.cloudflare.com/ajax/libs/loadCSS/2.1.0/cssrelpreload.min.js"></script>
23     ><script src="https://cdnjs.cloudflare.com/ajax/libs/loadCSS/2.1.0/onloadCSS.min.js"></script>
24     ><link as="style" href="https://fonts.googleapis.com/css?family=Open+Sans:300,400,600,700" onload="this.rel='stylesheet'" rel="stylesheet">
25     ><script src="//cdn.assurance.com/insurance/public/assets/customer-8293335...js" data-turbolinks-track="true"></script>
26     ><script>$(document).ready(function(){ initFingerprint(); initPlateHashes(true); });</script>
27     ><script>...</script>
28     ><script>$(document).ready(function () { $(window).unbind('beforeunload'); });</script>
29     ><input id="leadid_token" name="universal_leadid" type="hidden" value data-testid="universal_leadid">
30     ><script id="LeadiDscript_campaign" type="text/javascript" async src="//create.lidstatic.com/campaign/cf934278-b099-eb50-bf86
31       _105a165fc4e.js?snippet_version=2"></script>
32     ><script src="//cdn.assurance.com/insurance/public/assets/leadid-e55ab46...js" id="LeadiDscript"></script>
33     ><noscript>...</noscript>
34     ><form id="trustedFormFormElement"></form>
35     ><script src="//cdn.assurance.com/insurance/public/assets/trustedForm-4a12057...js"></script>
36     ><noscript></noscript>
37     ><style type="text/css">...</style>
38     ><script src="https://www.datadoghq-browser-agent.com/datadog-rum.js"></script>
39     ><script>...</script>
40     ><div>...</div>
41     ><div id="LeadiD-wrapper-element" class=" LeadiD-ignore-mutation" style="width: 1px; height: 1px; overflow: hidden; position:
42       fixed; left: -1px; top: 0px;">...</div>
43   ></body>
44 </html>
```

27 **Fig. 3**
 28

1 48. An ordinary consumer would not know that their answers in the life insurance form are
 2 being recorded or shared with a third party.

3 49. Without the consent of the user, Prudential enables ActiveProspect to monitor, intercept,
 4 and record a user's interactions with the site as it asks questions including the following:

- 5 a. "What is your gender?"
- 6 b. "Have you used Tobacco Products within the last 12 months?"
- 7 c. "Are you currently married?"
- 8 d. "Do you have children?"
- 9 e. "What is your date of birth?"
- 10 f. "Why are you looking for life insurance?"
- 11 g. "What is your height?"
- 12 h. "What is your weight?"
- 13 i. "Are you currently taking any prescription medications?"
- 14 j. "In the past 5 years have you been treated or prescribed medication for any of the
 15 following conditions: anxiety/depression/bipolar; cancer; chronic pain; diabetes;
 16 heart or circulatory disorder; respiratory disorder; other medical condition?"

17 In the past 5 years have you been treated or prescribed
 18 medication for any of the following conditions?

19 Select all that apply.

<input checked="" type="checkbox"/> Anxiety / depression / bipolar	<input checked="" type="checkbox"/> Heart or circulatory disorder
<input type="checkbox"/> Cancer	<input type="checkbox"/> Respiratory disorder
<input type="checkbox"/> Chronic pain	<input type="checkbox"/> Other medical condition
<input type="checkbox"/> Diabetes	<input type="checkbox"/> I have no medical conditions

20 Our expert agents can find affordable plans for people with less than perfect health.

21 22 23 24 25 26 27 28



Fig. 4

- k. "Have you been hospitalized or missed more than 1 week of work due to anxiety, depression, or bipolar disorder?"

1 l. “Are you currently employed?”
2 m. “Is your heart or circulatory disorder ONLY high blood pressure?”

3
4 Have you been hospitalized or missed more than 1 week of work due to anxiety,
5 depression, or bipolar disorder?

6 Yes

7 No

8 OR CALL (855) 958-2736

9 Is your heart or circulatory disorder ONLY high blood pressure?

10 Yes

11 No

12 OR CALL (855) 958-2736

13 **Fig. 5**

14 n. “Do you have an amount of coverage in mind?”
15 o. “What is your zip code?”
16 p. “What is your email?”
17 q. “Please enter your mobile number”

50. After answering these questions, users can view a quote. On the final page of the webform before the user can view a quote, above a button that says “View My Results,” users are told, in light grey font, that “By clicking the View My Results Button, I agree to the consents below the button,” as shown below.

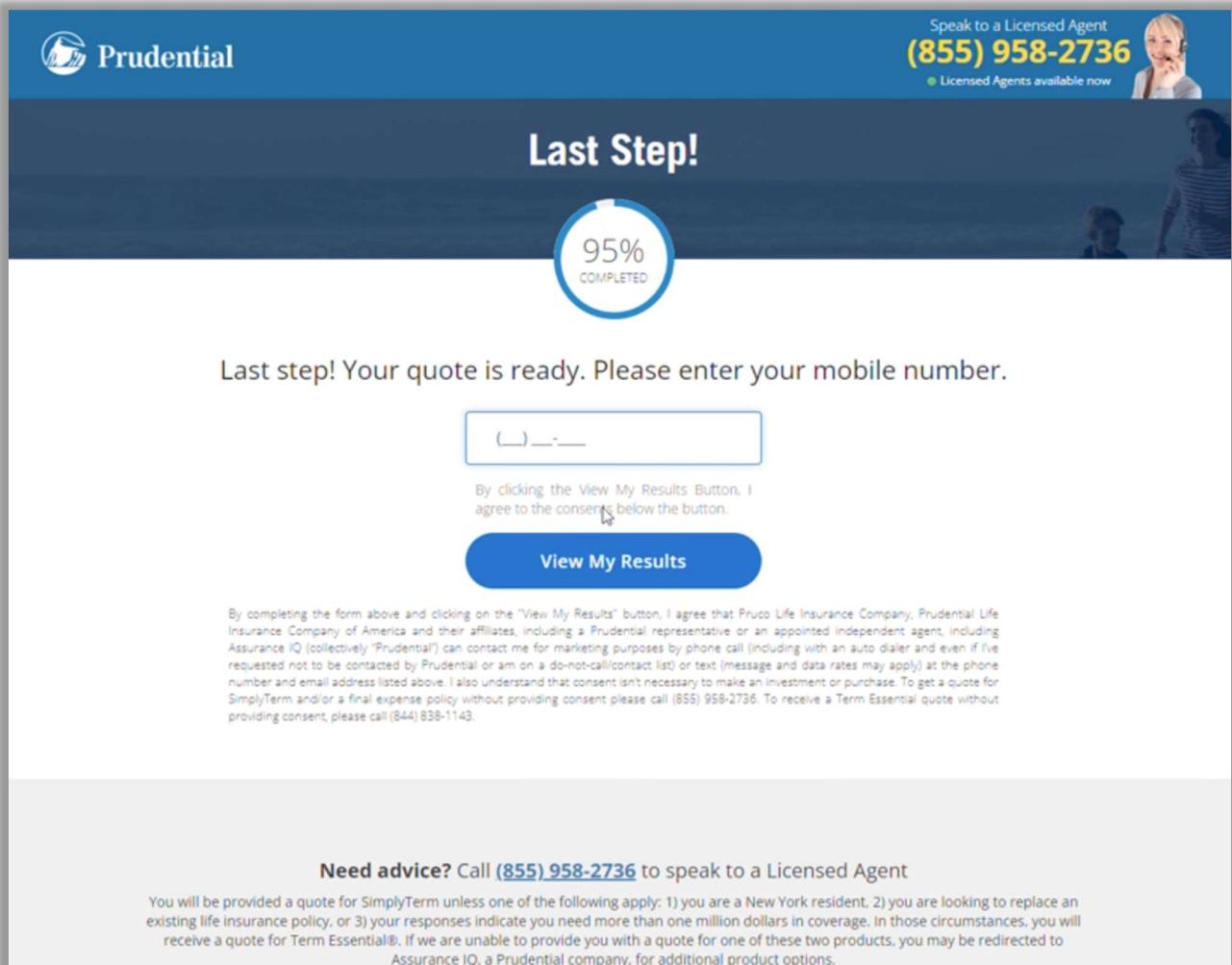


Fig. 6

51. During the class period, the language underneath the View My Results button was as follows, or substantially similar: "By completing the form above and clicking on the 'View My Results' button, I agree that Pruco Life Insurance Company, Prudential Life Insurance Company of America and their affiliates, including a Prudential representative or an appointed independent agent, including Assurance IQ (collectively 'Prudential') can contact me for marketing purposes by phone call (including with an auto dialer and even if I've requested not to be contacted by Prudential or am on a do-not-

call/contact list) or text (message and data rates may apply) at the phone number and email address listed above. I also understand that consent isn't necessary to make an investment or purchase. To get a quote for SimplyTerm and/or a final expense policy without providing consent please call [telephone number]. To receive a Term Essential quote without providing consent, please call [telephone number].”

52. After clicking “View My Results” and viewing any quote that is offered, some users may continue filling out the form to apply for life insurance, after being prompted to answer additional questions under the heading “Eligibility.”

53. Only after the consumer has already answered multiple personal questions, including the ones described above, *all of which have already been recorded in real time*, does Prudential ask consumers to consent to its Terms, as shown below.

Prudential

Speak to a Licensed Agent

(855) 958-2736

Licensed Agents available now



We take your personal information and privacy seriously.

As we proceed, the first step is to obtain your authorization to obtain necessary information, provide you with our privacy statement and also obtain your consent to utilize e-signature and e-delivery through the application process. Please read carefully:

- Authorization to Release Information (which sets forth the medical and other authorizations you are providing to Prudential in order to be considered for life insurance);
- Prudential's Privacy Notice (which sets forth how Prudential may use and protect your data);
- Consent to Electronic Receipt of Documents and Electronic Signatures (which sets forth the terms and conditions for use of e-signature and e-delivery).
- Important Notice About Your Application

By clicking "**Continue I Agree**" below,

1. Acknowledge that I have read and agree to terms set forth in the Authorization to Release Information and request that my electronic signature be applied. I understand that this signature and authorization is legally binding;
2. Acknowledge that I have received Prudential's Privacy Notice, which includes important information about how Prudential uses and shares personal information among Prudential companies and about how I can limit or "opt out" of this use and sharing of my personal information; and
3. Consent to utilize e-signature and e-delivery under the terms set forth in the Electronic Receipt of Documents and Electronic Signatures.

[Previous](#)

[Continue, I Agree](#)

Fig. 7

54. Users who are not offered a quote for life insurance, and users who receive a quote but chose not to proceed to provide all of the additionally requested “Eligibility” information do not reach or view the page shown in Figure 7.

1 55. Only if they click through to Prudential’s privacy notice (the second of four fine-print
 2 links) would a consumer learn that Prudential “may share your personal information, including
 3 information about your transactions and experiences, among Prudential companies and with other non-
 4 Prudential companies who perform services for us or on our behalf, for our everyday business
 5 purposes.”¹²

6 56. Only if they click through to “Important Notice About Your Application” (the fourth
 7 fine-print link) would a consumer learn that Prudential “may disclose information we have collected as
 8 follows: to affiliates or third parties that perform services for us, or on our behalf.”¹³

9 57. From the time of the webform’s launch on February 23, 2021 to approximately March 9,
 10 2023, the Privacy Policies linked in the webform took users only to Prudential Financial’s privacy
 11 policies. On or around March 10, 2023, Prudential changed the webform to instead link users to
 12 Assurance IQ’s privacy policies.

13 58. By the time consumers are presented with the screen shown above in Figure 7, the
 14 interception has already occurred—their personal information has already been captured without their
 15 knowledge or consent. In other words, even if a user reaches the point in the process at which Prudential
 16 asks for consent, if the user does not agree, and leaves the website, their information has already been
 17 captured and intercepted in real time.

18 59. Prudential’s consent disclosures do not adequately notify consumers that their responses
 19 to that point have been intercepted.

20 60. On December 14, 2022, less than one month after the filing of Plaintiffs’ initial
 21 complaint, and well after they visited Prudential’s website, Prudential altered its website to add a small
 22 and inconspicuous disclosure to the life insurance quote form purporting to obtain user consent to record
 23 their inputs.

24
 25
 26 ¹² https://assets.assurance.com/files/life/prudential/forms/privacy_notice/Privacy_Note_2022.pdf.
 27
 28 ¹³ https://assets.assurance.com/files/life/prudential/forms/Important_Note_About_Your_Application/Ot
 her_States/NXU-IMPN+ED+05-2018+00+ZZ.pdf.

1 61. The changes to Prudential's website acknowledge and demonstrate that before December
 2 14, 2022, the Defendants did intercept and record users' communications and personal information
 3 without their knowledge or prior consent.

4 62. Prudential knows that TrustedForm captures the keystrokes, mouse clicks and other
 5 communications of visitors to its website. Prudential pays ActiveProspect to supply that information.

6 63. Pursuant to an agreement with ActiveProspect, Prudential voluntarily embedded
 7 ActiveProspect's software code on Prudential.com.

8 64. As currently deployed, TrustedForm, as used by Prudential, operates as a wiretap.

9 65. Prudential and ActiveProspect, and each of them, intercepted, recorded and monetized
 10 valuable personal information without the consent of website users. Prudential recognizes the value and
 11 market for this information on its website: "We sell or share Personal Information for the purpose of
 12 advertising." Prudential generates "leads" containing the intercepted information and either profits from
 13 selling life insurance to leads directly, or shares leads with its partner companies and receives a
 14 commission if one of them sells life insurance to the lead. ActiveProspect's TrustedForm product is
 15 designed to facilitate and increase the value of those leads.

16 66. An older study values users' web-browsing histories at \$52 per year. The Organization
 17 for Economic Cooperation and Development likewise estimated the prices for various elements of
 18 personal data: \$0.50 for an address, \$2 for birthdate, \$8 for a Social Security number, \$3 for a driver's
 19 license number, and \$35 for a military record.¹⁴ More recent estimates suggests higher values for
 20 personal data: a personal email can be worth \$89, a complete health care record \$250, and a hacked
 21 Facebook account can sell for \$65 on the dark web.¹⁵ Similarly, a 2019 report found that data generated
 22 from an adult is worth roughly \$35 per month.¹⁶

23
 24
 25 ¹⁴ Exploring the Economics of Personal Data: A Survey of Methodologies for Measuring Monetary
 26 Value, OECD DIGITAL ECONOMY PAPERS, No. 220 (Apr. 2, 2013),
<https://www.oecdilibrary.org/docserver/5k486qtxldmq-en.pdf>.

27 ¹⁵ <https://www.invisibly.com/learn-blog/how-much-is-data-worth/> (last accessed Jan. 30, 2023).

28 ¹⁶ <https://www.vox.com/recode/2019/6/24/18715421/internet-free-data-ads-cost> (last accessed Jan. 30, 2023).

1 **III. Defendants Wiretapped Plaintiffs' Electronic Communications**

2 67. **Valerie Torres.** In approximately October 2022, Valerie Torres used the Prudential
3 Financial website to search for an insurance quote.

4 68. Torres was in Los Angeles, California when she visited the website.

5 69. During her visit, Prudential and ActiveProspect recorded Torres's electronic
6 communications in real time, used the intercepted data to attempt to learn her identity, zip code, date of
7 birth, height, weight, use of prescription medications and tobacco products, and other PII and PHI.

8 70. Torres was unaware at the time that her keystrokes, mouse clicks, and other electronic
9 communications, including the information described above, were being intercepted in real time and
10 would be disclosed to ActiveProspect. At no point did Torres consent to share that private information
11 with ActiveProspect.

12 71. **Rhonda Hyman.** In approximately December 2021 and possibly also sometime between
13 March 2022 and January 2023, Rhonda Hyman used the Prudential Financial website to search for an
14 insurance quote.

15 72. Hyman was in Los Angeles, California when she visited the website.

16 73. During her visit, Prudential and ActiveProspect recorded Hyman's electronic
17 communications in real time, used the intercepted data to attempt to learn her identity, zip code, date of
18 birth, height, weight, use of prescription medications and tobacco products, and other PII and PHI.

19 74. Hyman was unaware at the time that her keystrokes, mouse clicks, and other electronic
20 communications, including the information described above, were being intercepted in real time and
21 would be disclosed to ActiveProspect. At no point did Hyman consent to share that private information
22 with ActiveProspect.

23 75. During each Plaintiff's visit, the TrustedForm VideoReplay feature recorded a video
24 capturing Plaintiffs' keystrokes and mouse clicks on the website as Plaintiffs were entering them.
25 TrustedForm also captured the date and time of each visit, the duration of the visit, Plaintiffs' IP address,
26 their location at the time of the visit, browser type, and the operating system on their device.

1 76. Users, including Plaintiffs, did not receive notice of Prudential’s Privacy Policy or
 2 Assurance IQ’s Privacy Policy when they clicked “Get an instant quote,” which initiates the interception
 3 of their responses on the form.

4 77. Users, including Plaintiffs, do not provide informed consent when, after providing some
 5 personal information that has already been intercepted, they are presented with a series of links to
 6 Prudential’s Privacy Policy and other terms. Even if the consumer were to click through to the terms, the
 7 disclosures do not adequately inform consumers that their activity is being intercepted. Moreover, by the
 8 time consumers reach the point where they must click purportedly to assent to the terms, the interception
 9 has already occurred, and their personal information has already been captured without their knowledge
 10 or consent. In addition, links to Assurance IQ’s Privacy Policy were not provided to consumers during
 11 the class period.

12 78. Prudential did not inform visitors to its websites that their keystrokes, mouse clicks and
 13 other communications were being recorded and shared with ActiveProspect. The limited disclosures
 14 Prudential does provide are given *after* Active Prospect and Prudential have already intercepted and
 15 recorded users’ keystrokes and PII.

16 79. No Plaintiff or Class member consented to being wiretapped on a Prudential website or to
 17 the recording and sharing of their communications with ActiveProspect. Moreover, any purported
 18 consent was ineffective because (i) the wiretapping began from the moment Plaintiffs and Class
 19 members accessed the web page; and (ii) even the later-linked Privacy Policy did not disclose the
 20 wiretapping, ActiveProspect’s interception and recording of their PII, or its sharing of this sensitive
 21 information.

22 80. In addition, during the class period, at no time before or during a user’s browsing of its
 23 websites did Prudential disclose that it will be recording users’ activities in real time. Prudential’s
 24 Privacy Policy does not disclose that it records a user’s activities in real time. Even if Prudential had
 25 disclosed its wiretapping in its Privacy Policy, Prudential still acted without Plaintiffs’ consent because
 26 Prudential does not ask its users’ consent until after it has already begun wiretapping them.

1 81. When ActiveProspect and its website-owner clients wish to disclose ActiveProspect's
 2 technology, they do so explicitly. Model language, included in ActiveProspect's standard form EULA,
 3 states as follows:

4 We use ActiveProspect's TrustedForm Script to independently document
 5 users' consent to be contacted. The TrustedForm Script is embedded on our
 6 website and collects the following information when you interact with the
 7 page(s) where the script is present: page URL, mouse movements and
 8 clicks, contact information inputted by the user, a snapshot of the page,
 9 including IP address of the user's computer, time on the page, date and time
 10 that the TrustedForm Script was loaded, as well as the date and time of the
 11 various user interactions with the page, and HTTP headers from the user's
 12 browser.

13 82. Plaintiffs and Class members were never shown this disclosure or any link to such a
 14 disclosure. Prudential's Privacy Policy contains no such provision.

15 **IV. Relationship Between Prudential Financial, Inc. and Assurance IQ, LLC**

16 83. At all relevant times, Assurance IQ acted as the agent of Prudential Financial regarding
 17 the webform, term.prudential.com, and Assurance IQ's actions related to the webform were within the
 18 scope of that principle-agent relationship. Alternatively, Assurance IQ acted as Prudential's alter ego
 19 with respect to its actions related to term.prudential.com.

20 84. Prudential Financial acquired Assurance IQ in October 2019 "for \$2.2 billion paid at
 21 closing, plus the fair value of additional contingent payments of up to \$1.2 billion payable in 2023 upon
 22 the achievement of certain financial targets."¹⁷

23 85. Following its acquisition, Prudential Financial described the "Assurance IQ division" as
 24 one of its "U.S. Businesses," comprising Prudential Financial's principal operations.¹⁸ Prudential

26 ¹⁷ Prudential Financial, Inc. 10-K (2019) at 153.

27 ¹⁸ Prudential Financial, Inc. 10-K (2019) at 160 ("The Company's principal operations are comprised of
 28 PGIM (the Company's global investment management business), the U.S. Businesses (consisting of the
 U.S. Workplace Solutions, U.S. Individual Solutions, and Assurance IQ divisions), the International
 Businesses, the Closed Block division, and the Company's Corporate and Other operations.").

1 Financial stated in its 2019 10K filing that “We also expect to offer Individual Solutions products on the
 2 Assurance IQ platform over time.”¹⁹

3 86. Following its acquisition of Assurance IQ, Prudential Financial assigned certain of its
 4 executives to roles at Assurance IQ. The Assurance IQ CEO reports to leadership at Prudential, and the
 5 companies share certain chief officers, including that Assurance IQ’s chief legal officer, chief compliance
 6 officer, and chief financial officer are Prudential employees. For example, Assurance IQ’s chief legal
 7 officer is Doug Morrin, whose title at Prudential is Vice President and Chief Legal Officer, U.S.
 8 Distribution.

9 87. Prudential Financial decided to expand its direct-to-consumer distribution channels by
 10 leveraging Assurance IQ’s technology in the way it approached consumer-facing web flows. Prudential
 11 Financial uses Assurance IQ’s technology on the webform located at term.prudential.com where it
 12 offered website visitors a quote for life insurance.

13 88. Assurance IQ built and maintains term.prudential.com for Prudential, and Assurance IQ
 14 hosts the code for the website.

15 89. Prudential Financial directed Assurance IQ’s actions in the creation, implementation, and
 16 maintenance of the webform.

17 90. Before the creation of term.prudential.com, Assurance IQ used ActiveProspect’s
 18 TrustedForm technology on its own webforms. With full knowledge of how that technology operated,
 19 Assurance IQ designed and built Prudential’s webform to include ActiveProspect’s TrustedForm
 20 technology from the time it launched.

21 91. Certain chief officers at Prudential Financial including at least Vice President and Chief
 22 Legal Officer Doug Morrin also had knowledge of how the TrustedForm technology worked.

23 92. Publicly, the webform appeared to be solely a Prudential Financial website during the
 24 Class period. The webform has only Prudential’s name and logo, and the links in the footer of the page
 25 were, during the Class period, only links to other pages at Prudential.com.

26
 27
 28 ¹⁹ *Id.* at 55.

1 93. From the time term.prudential.com launched in February 2021 to December 13, 2022, no
 2 mention of Assurance IQ appeared anywhere on the public face of the webpage other than the fine print
 3 on the final page before a user received a life insurance quote, and it contained no link to Assurance IQ's
 4 terms of service or privacy policies.

5 94. Assurance IQ maintains a database that stores all the information provided by and
 6 collected about website visitors who filled out the webform during the Class period. For each visitor
 7 who submits information on the webform, the database includes at least (a) identifying information,
 8 including certain metadata (e.g. IP address), (b) the information they inputted in each webform field, (c)
 9 a unique TrustedForm certificate number associated with their interaction with the webform, and (d) a
 10 link to a TrustedForm certificate created by ActiveProspect.

11 95. Prudential Financial and Assurance IQ share data provided by and collected about
 12 website visitors to term.prudential.com.

13 96. Prudential Financial and Assurance IQ each have the ability to offer quotes and sell life
 14 insurance to website visitors who fill out the webform on term.prudential.com. Additionally, if another
 15 Prudential distributor sells a website visitor an insurance policy as a result of the visitor's submission of
 16 the webform at term.prudential.com, Prudential receives a commission on that sale.

17 97. Assurance IQ and Prudential Financial aided and abetted, encouraged, and rendered
 18 substantial assistance to ActiveProspect in implementing its technology and to accomplish the wrongful
 19 conduct at issue here. In taking action, as alleged herein, to aid, abet, encourage, and substantially assist
 20 the commissions of the wrongful acts and other misconduct set forth herein, Assurance IQ and
 21 Prudential Financial acted with an awareness of its primary wrongdoing and realized that its conduct
 22 would substantially aid the accomplishment of the wrongful acts and purposes set forth herein.

23 98. Currently and at all relevant times, the interests of Assurance IQ and Prudential Financial
 24 are and were unified. Prudential Financial is the sole governor and sole member of the LCC, and
 25 controls Assurance IQ. To the extent Prudential Financial is an entity separate from Assurance IQ, its
 26 form should be disregarded to avoid an inequitable result. As the sole governor and sole member of
 27 Assurance IQ, Prudential Financial directed the actions taken by Assurance IQ as alleged herein, while
 28 also directing Assurance IQ to transfer to Prudential Financial all profits, including but not limited to the

1 profits stemming from ActiveProspect's wiretap of Class Members' communications on the
 2 Prudential.com webform.²⁰

3 **CLASS ACTION ALLEGATIONS**

4 99. Plaintiffs bring this lawsuit under Federal Rules of Civil Procedure 23(a) and (b)(3) as
 5 representatives of a Class of all natural persons who, while in California, visited Prudential.com,
 6 provided personal information on Prudential's form to receive a quote for life insurance, and for whom a
 7 TrustedForm Certificate URL associated with that website visit was generated.

8 100. Excluded from the Class are Defendants, their employees, agents and assigns, and any
 9 members of the judiciary to whom this case is assigned, their respective court staff, the members of their
 10 immediate families, and Plaintiffs' counsel.

11 101. The "Class Period" is from November 23, 2021 to December 13, 2022.²¹ Plaintiffs
 12 reserve the right to modify, change, or expand the class definition as appropriate based on further
 13 investigation and discovery obtained in the case.

14 102. **Numerosity:** The Class consists of at least thousands of individuals, making joinder
 15 impractical.

16 103. **Commonality and predominance:** Common questions of law and fact exist with regard
 17 to each of the claims and predominate over questions affecting only individual Class members.
 18 Questions common to the Class include:

- 19 a. Whether Defendants violate the California Invasion of Privacy Act ("CIPA"), Cal.
 20 Penal Code § 631;
- 21 b. Whether Defendants invaded Plaintiffs' privacy rights in violation of the California
 22 Constitution;

24 ²⁰ See Prudential Financial, Inc. 10-K (2020); Prudential Financial, Inc. 10-K (2021); Prudential
 25 Financial, Inc. 10-K (2022); Prudential Financial, Inc. 10-K (2023) ("Our revenues [related to
 Assurance IQ] primarily come in the form of . . . [c]ase referral revenues earned from marketing
 26 partners related to the transfer of calls, clicks or leads.").

27 ²¹ Plaintiffs currently propose that the class period end at the time Prudential changed its website to add
 28 a disclosure purporting to secure visitors' consent to use of TrustedForm. Plaintiffs nonetheless do not
concede that users after that change provide informed consent before their communications are
intercepted.

c. Whether Defendants were unjustly enriched as a result of obtaining users' private and personal information; and

d. Whether Plaintiffs and Class members are entitled to actual and/or statutory damages for the aforementioned violations.

104. **Typicality:** The claims of the Plaintiffs are typical of the claims of the Class because the Plaintiffs, like all other Class members, visited Prudential's website and input personal information, which was intercepted and disclosed to ActiveProspect through Prudential's use of TrustedForm.

105. **Adequacy of representation:** Plaintiffs and their counsel will fairly and adequately protect and advance the interests of Class members. Plaintiffs' interests align with the interests of the Class members they seek to represent. Plaintiffs have retained competent counsel experienced in prosecuting class actions, including consumer privacy cases, and will prosecute this action vigorously.

106. **Superiority:** The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. The claims of each individual Class member are too small to make individual litigation realistic or feasible. The class action device also presents far fewer management difficulties and provides the benefits of unitary adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I

Violation of the California Invasion of Privacy Act (“CIPA”) Cal. Penal Code § 631

107. Plaintiffs repeat the factual allegations contained in the foregoing paragraphs as if fully set forth herein.

108. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendants.

109. To establish liability under section 631(a), a plaintiff need only show that the defendant, does any of the following:

by means of any machine, instrument, contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system,

1 *Or*

2 Willfully and without the consent of all parties to the communication, or in
 3 any unauthorized manner, reads or attempts to read or learn the contents or
 4 meaning of any message, report, or communication while the same is in
 5 transit or passing over any wire, line or cable or is being sent from or
 6 received at any place within this state,

7 *Or*

8 Uses, or attempts to use, in any manner, or for any purpose, or to
 9 communicate in any way, any information so obtained,

10 *Or*

11 Aids, agrees with, employs, or conspires with any person or persons to
 12 unlawfully do, or permit, or cause to be done any of the acts or things
 13 mentioned above in this section.

14 110. Section 631(a) is not limited to phone lines but also applies to newer technologies such as
 15 computers, the Internet, and email.

16 111. ActiveProspect's TrustedForm product is a "machine, instrument, contrivance, or . . .
 17 other manner" used to engage in the prohibited conduct at issue in this action.

18 112. ActiveProspect's TrustedForm product intercepts Class members' communications in
 19 transit while passing over the lines of internet communication by recording them in real time as the user
 20 enters information, even before the user clicks a button to submit the completed form to Prudential
 21 through its website.

22 113. **Prudential's CIPA Violations:** At all relevant times, by using ActiveProspect's
 23 TrustedForm technology, Prudential:

- 24 a. substantially aided, agreed with, employed, and conspired with ActiveProspect to
 25 implement ActiveProspect's technology and to accomplish the wrongful conduct at
 26 issue here; and
- 27 b. acted intentionally, as it purposefully contracted with ActiveProspect and
 28 programmed the relevant software into its website code.

29 114. **ActiveProspect's CIPA Violations:** At all relevant times, by providing TrustedForm's
 30 service to Prudential, ActiveProspect:

- a. willfully and without the consent of all parties to the communication, read or attempted to read or learn the contents or meaning of electronic communications of Plaintiffs and Class members, while the electronic communications were in transit or passing over any wire, line or cable or were being sent from or received at any place within California.

115. Plaintiffs and Class members did not consent to any of Defendants' actions connected with ActiveProspect's wiretaps on Prudential's website. Nor did Plaintiffs or Class members consent to Defendants' intentional access, interception, reading, learning, recording, and collection of Plaintiffs' and Class members' electronic communications.

116. Defendants' violation of section 631(a) constitutes an invasion of privacy.

117. Plaintiffs and Class members seek all relief available under Cal. Penal Code § 637.2, including statutory damages of \$5,000 per violation.

COUNT II

Invasion of Privacy California Constitution, Art. 1, § 1

118. Plaintiffs repeat the factual allegations contained in the foregoing paragraphs as if fully set forth herein.

119. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendants.

120. Plaintiffs and Class members have a strong interest in: (1) precluding the dissemination and/or misuse of their sensitive, confidential PII and PHI; and (2) making personal decisions and/or conducting personal activities without observation, intrusion or interference, including the right to visit and interact with various Internet sites without being subjected to wiretaps without Plaintiffs' and Class members' knowledge or consent.

121. Defendants wrongfully intruded upon Plaintiffs' and Class members' seclusion in violation of California law. Plaintiffs and Class members reasonably expected that the private personal information, including sensitive, confidential PII and PHI, they entrusted to Prudential would be kept private and secure, and would not be disclosed to any unauthorized third party or for any unauthorized purpose.

1 122. At all relevant times, by implementing ActiveProspect's wiretaps on Prudential's
 2 Website, each Defendant intentionally invaded Plaintiffs' and Class Members' privacy rights protected
 3 by the California Constitution, and procured the other Defendant to do the same.

4 123. Defendants unlawfully invaded Plaintiffs' and Class members' privacy rights by:

5 a. harvesting their personal information, including sensitive, confidential PII and PHI,
 and transmitting it to unauthorized third parties or for improper purposes;

6 b. enabling the disclosure of personal and sensitive facts about them in a manner
 highly offensive to a reasonable person; and

7 c. enabling the disclosure of personal and sensitive facts about them without their
 informed, voluntary, affirmative, and clear consent.

8 124. Plaintiffs and Class members did not consent to any of Defendants' actions in
 9 implementing ActiveProspect's wiretaps on Prudential's website.

10 125. A reasonable person would find it extremely offensive that Defendants received,
 11 collected, and stored private personal information of this nature from Californians without their consent.

12 126. In failing to adequately protect Plaintiffs' and Class members' personal information,
 13 Defendants acted knowingly and in reckless disregard of their privacy rights. Defendants were aware
 14 that using TrustedForm on Prudential.com would share user's private information with an
 15 ActiveProspect, an unauthorized third party. Nevertheless, Prudential chose to, and did, use
 16 TrustedForm without users' consent and ActiveProspect chose to, and did, offer TrustedForm for use by
 17 Prudential without users' consent. Defendants also knew that their conduct would be highly offensive to
 18 a reasonable person in Plaintiffs' position given the sensitivity of the information being communicated.

19 127. Defendants' unlawful invasions of privacy damaged Plaintiffs and Class members. As a
 20 direct and proximate result of these invasions, Plaintiffs and Class members suffered mental distress,
 21 and their reasonable expectations of privacy were frustrated and defeated.

22 128. Defendants' invasion of privacy is serious in nature, scope, and impact, breaching the
 23 social norms underlying the privacy rights that our state Constitution enshrines for all Californians.

24 129. As such, Plaintiffs and Class members seek all relief available for invasion of privacy in
 25 violation of Article I, Section 1 of California's Constitution.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request the Court enter judgment against Defendants through an order:

- a. Certifying the Class under Rule 23 and appointing Plaintiffs as the representatives of the Class and Plaintiffs' attorneys as Class Counsel;
- b. Finding in favor of Plaintiffs and the Class on all counts asserted herein;
- c. Granting Plaintiffs and the Class compensatory, statutory, and/or punitive damages and/or civil penalties or restitution;
- d. Awarding prejudgment interest on all amounts awarded;
- e. Awarding Plaintiffs and the Class a reasonable attorney fee and costs of suit; and
- f. Such other and further relief as the Court deems necessary or appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all claims and issues so triable.

Dated: June 6, 2024

Respectfully submitted,

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